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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,255	02/27/2004	Eli Markowitz	MS-523-B	9496
7590	02/08/2005		EXAMINER	
Bernard Malina Suite 501 60 East 42nd Street New York, NY 10165			COLLINS, TIMOTHY D	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 02/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/789,255	Applicant(s) MARKOWITZ, ELI
	Examiner Timothy D Collins	Art Unit 3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 27 February 2004.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 20-50 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 20-50 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____

5) Notice of Informal Patent Application (PTO-152)

6) Other: _____

DETAILED ACTION

Note: for the purposes of examination, claims 1-19 are being taken as being cancelled.

They are improperly stated as (allowed) in the listing of the claims, however they were allowed in a previous case. It is also noted that this is a separate and distinct case from the previous one that is the parent, and therefore it should be denoted by it's own serial number which is 10/789255. Therefore the only claims that are presently pending in the instant application are claims numbered 20-50.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10, 12-19, 20-25, 28, 33, 39, 41, 43, 45-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baillie et al (hereinafter called 725) in view of Schwede ('490) and further in view of USPN 5890455 to Donchey (hereinafter called 455).

In regards to **claim 20**, Baillie et al. teach an automatic animal grooming, feeding and litterbox apparatus comprising an enclosure (10) having a portal (26), and a grooming brush (52). Baillie et al. fail to teach a source of food disposed in the enclosure (10). However, Schwede teaches a similar device that incorporates a wide variety of attracting devices such as exercise devices and food and water. The

introduction of these types of features is well known in the art of training animals. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the apparatus disclosed by Baillie et al. to include a food source, as disclosed by Schwede, in order to lure the cat into the enclosure.

In regards to **claim 21**, Baillie et al., as modified above, teaches the claimed invention except for specifying more than one level. However, the Schwede reference teaches a first level (26) and a second level (22) and a ramp (23) communicating between both levels. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the enclosure disclosed by Baillie et al. to include multiple levels, as taught by Schwede, in order to provide a more spacious environment for the cat.

In regards to **claim 22**, Baillie et al., as modified may not specifically teach of a mesh wall panel, however 455 does disclose this in figure 7. Therefore it would have been obvious to one of ordinary skill in the art to have applied the teachings of Schwede into the device of Baillie et al, so as to provide for increased airflow. Baillie et al. discloses solid wall panels at least the figures. Also 725 may not specifically disclose accordion wall panels, however 455 does disclose accordion wall panels at least in figure 11. Therefore it would have been obvious to one of ordinary skill in the art to have applied the teachings of 455 into the device of 725 as modified so as to allow for the pet enclosure to be extended outdoors through a window as taught by 455 in at least lines 57-60 of column 4.

In regards to **claim 23**, Baillie et al., as modified may not specifically disclose that the walls are removable, however 455 does teach of this at least in figures 6,7 and 11. Therefore it would have been obvious to one of ordinary skill in the art to have applied the teachings of removable walls into the device of Baillie et al. as modified so as to allow for storage in small spaces, and for easy cleaning and replacement of broken parts.

Regarding **claim 24**, Baillie et al., as modified, teach an apparatus further comprising a maze disposed between the portal (26) and the food source with the grooming brush (52) means disposed in the maze. See Figure 4A.

In regards to **claim 25**, Baillie et al., as modified, teach an apparatus in which the maze is adjustable (column 3, lines 5-10).

Regarding **claim 28**, Baillie et al., teach the claimed invention except for specifying the grooming brush (52) to be attached to an elastic support. However, one of ordinary skill in the art would have found this obvious since if the support was rigid, the brushes would tend to rip off when the animal passed through the opening. Also, since it has been held to be within the general skill of a worker to choose a material based on its suitability for the intended use as a matter of design choice one having ordinary skill would have found this selection obvious.

In regards to **claim 33** Baillie et al. as modified, teach an apparatus further comprising litter box means (28) in the enclosure (10).

Regarding **claim 39**, Baillie et al. as modified, fail to teach a second enclosure. However, it would have been obvious to one having ordinary skill in the art at the time of

the invention to attach an additional enclosure, since it has been held in the art that mere duplication of the essential working parts of a device involves only routine skill in the art.

In regards to **claim 41**, Baillie et al. as modified teaches an enclosure (10) comprising an open container (50) mounted in the enclosure (10) and clay material disposed in the open container means (50). See Baillie et al. column 4, lines 5-10.

Regarding **claim 43**, Baillie et al. as modified teaches a grooming brush means (52) comprising shedder means mounted in the grooming brush means. See column 4, lines 5-10.

Regarding **claim 45**, Baillie et al. as modified teaches a grooming brush means (52) comprising a plurality of brushes disposed forming an aperture. See Figure 4A.

Regarding **claim 46**, Baillie et al. as modified teaches a grooming brush means (52) comprising a plurality of brushes disposed forming an adjustable aperture. See Figure 4A.

Regarding **claim 47**, Baillie et al. as modified teaches at least one brush support frame. See Figures 4A and 4B.

Regarding **claim 48**, Baillie et al. as modified teaches a pair of brush support plates (unnumbered) with each plate defining an aperture and said pair of brush plates defining a common aperture (unnumbered). Though Baillie et al. does not specifically show plates, the brushes must be mounted on something in order to stabilize the bristles. In Figure 4A there are two strips of brushes facing one another defining a common aperture.

Claims 26-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baillie et al. in view of Schwede, in view of Donchey and further in view of Northrup et al.

In regards to **claim 26**, Baillie et al., teach the claimed invention except for specifying the ramp to include nail grooming means. However, Northrup et al. teach a similar animal apparatus, which includes a ramp (80) having nail grooming means (82). Therefore, it would have been obvious to modify the ramp taught by Baillie et al., to include the grooming surface, taught by Northrup et al. in order to provide a friction surface to help the cat climb the ramp as well as to manicure the animal's nails.

Regarding **claim 27**, Baillie et al., as modified in the previous claim, teaches an apparatus wherein the grooming means comprises an abrasive layer (80) and a flexible mesh (82) layer spaced away from the abrasive layer (80).

Claims 29-32 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baillie et al. in view of Schwede, in view of Donchey and further in view of Leppanen.

In regards to **claims 29-32**, Baillie et al., fail to teach the specific type of grooming instrument to be used in the enclosure. However, Leppanen, discloses a wide variety of grooming brushes in the instant specification. Leppanen teaches a grooming brush comprising a plurality of hollow bristles. Also taught are various other grooming projections, which may further include barbs. See column 1, lines 35-52.

Leppanen also discloses a powder storage means and air delivery means communicating with the powder storage means and the hollow bristles for delivery of the powder from the storage means through the hollow bristles. See column 1, lines 35-40. Finally, since rearranging parts is held to be within the ordinary skill in the art, one would find it obvious to substitute curved bristles for straight bristles when inserting a grooming device into the animal enclosure.

Regarding **claim 49**, Baillie et al., fail to teach the specific type of grooming instrument to be used in the enclosure. However, Leppanen teaches a slotted flexible brush plate (46) having a front and rear and a pair of solid plates (28, 30) each having an aperture (44) with the solid plates mounted one in front and one in the rear of the slotted flexible brush plate (46). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the brushes disclosed by Baillie et al. with the brush taught by Leppanen, as a standard means of design choice considering all brushes are for the most part art recognized equivalents.

Claims 34-36 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baillie et al. in view of Schwede, in view of Donchey and further in view of Landon et al.

In regards to **claims 34-36**, Baillie et al., teach the claimed invention except for specifying air conditioning means mounted in the enclosure. However, Landon et al. teach an animal enclosure comprising an air conditioning unit. The air conditioning

means further comprises humidifier and temperature control means and vaporizer means. See column 15, lines

8-43. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the enclosure disclosed by Baillie et al., to include an air conditioning system, as shown by Landon et al., in order to allow the animals to become well acclimated within the enclosure.

Regarding **claim 37**, Baillie et al. as modified in the previous claim, do not specifically make mention of conductive plates and an electrostatic generator means. However, since these features are common elements in HVAC systems, one of ordinary skill in the art would find it obvious that these devices are present in the air conditioning system.

In regards to **claim 38**, Baillie et al., as modified, teach an apparatus comprising a sensor means as well as a control means disposed in the enclosure for sensing the position of an animal in the enclosure and operating the air conditioning means. See Landon et al. column 15, lines 26-54.

In regards to **claim 50**, Baillie et al., teach the claimed invention except for specifically stating that the apparatus includes electrical outlets. However, Landon et al. teach a animal enclosure having electrical outlets to power equipment (see column 12, lines 10-31). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to include electrical outlets, as taught by Landon et al, so that electrical appliances may be used in the animal enclosure.

Claim 44 is rejected under 35 U.S.C. 103(a) as being unpatentable over Baillie et al. in view of Schwede in view of Donchey and further in view of Marischem et al.

In regards to **claim 44**, Baillie et al., teach the claimed invention except for specifying a sonic generator. However, Marischem et al. teach a training method that incorporates a sonic generator for producing sonic energy in order to dissuade an animal from doing a particular action. (See Marischem et al. abstract). Therefore, it would have been obvious to one having ordinary skill in art at the time of the invention to modify the enclosure disclosed by Baillie et al., to incorporate a sonic generator, shown by Marischem et al., in order to add another training mechanism to the device thus teaching the animals obedience.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art discloses pet enclosures and doors.

- a. USPN 5458088
- b. USPN 5782206
- c. USPN 6257172
- d. USPN 5964189
- e. USPN 5247901
- f. USPN 5351653
- g. USPN 5791288

- h. USPN 5970556
- i. USPN 6050223
- j. USPN 5806461
- k. Des. 356442
- l. USPN 5092277
- m. USPN 4803952
- n. USPN 4171683
- o. JP 401291733a

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy D Collins whose telephone number is 703-306-9160. The examiner can normally be reached on M-Th, 7:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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